

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

www.flsb.uscourts.gov

GUIDELINES FOR PREPARING, SUBMITTING AND SERVING ORDERS

Note: Please refer to the judge's court web page for any additional requirements specific to that judge. To access from the court web site, click on "Court Information" and then "Judges Information".

Preface: Implementation of CM/ECF in this court has necessitated modifications in the manner in which proposed orders are prepared, submitted and served. These guidelines are intended to set forth: 1) how proposed orders should be delivered to the court; 2) the **new** formatting requirements for all orders; 3) how entered orders will be served; and 4) the required general content for all orders. As provided by Administrative Order 05-2, these new Guidelines have been adopted to implement electronic filing pending local rule changes and thus, wherever in conflict, supercede the current local rules.

PART ONE: HOW TO SUBMIT ORDERS

In conjunction with the implementation of CM/ECF, there are three methods for submitting proposed orders to the court as set forth below. Submission of a proposed order electronically or conventionally on a matter scheduled for hearing does not remove the matter from the judge's calendar. The parties must receive confirmation from the court that the hearing has been cancelled.

1. Electronic Submission of Orders via CM/ECF:

The court has adopted a new electronic processing program referred to as "E-Orders." E-Orders is intended to replace the conventional process by which proposed orders are delivered to the court, except as otherwise specified in Administrative Order 05-2 and supplemented by these "Guidelines." E-Orders provides the ability to upload PDF-formatted proposed orders directly into CM/ECF without appearing prematurely on the public docket (except for proposed "sample" orders attached as exhibits to motions served on negative notice). Orders uploaded in CM/ECF can be electronically routed to and signed by the judge without the need to print any paper. Additionally, attorneys and trustees can check the status of uploaded proposed orders. Because E-Orders requires a proposed order to be uploaded in PDF format, it cannot be edited by the court. Therefore, "E-Orders" should be used to submit local form orders and other routine ex-parte or uncontested orders where it is anticipated that further modifications will not be made by the court.

All local form orders have been converted to the new E-Orders format and should be submitted via E-Orders as listed on the attached “Summary List of Orders and Method of Submission” (“Summary”) [see Exhibit 1]. **The “Summary” also lists several local form orders that no longer need to be submitted by the parties since the court will generate them internally.**

The E-Orders Upload program is accessible as a separate menu item after logging on to CM/ECF. (See “User’s Guide for Electronic Case Filing”, Chapter II, Section 14).

2. Conventional (paper) submission of orders:

This method will be used 1) by all conventional paper filers; 2) for proposed orders brought to a hearing pursuant to Local Rule 5005-1(G)(b) and 3) for proposed orders listed in Section II of the “Summary”. Although conventional paper filers can continue to submit proposed orders in paper, they must adhere, as applicable, to the technical format and service requirements of these Guidelines.

3. Submission to judge’s dedicated E-mail Box:

This method will be used when specifically directed by the court for (1) submission of competing orders following a contested hearing or trial or orders setting forth Findings of Fact and Conclusions of Law submitted before or after a contested hearing or trial; or (2) submission of an alternative version of a proposed order when the opposing party disputes the form or content of the initial proposed order submitted by the prevailing party. Proposed orders submitted in a word processing format to an electronic mailbox permit the judge to make additional modifications, as opposed to orders submitted in PDF format via E-Orders which cannot be easily edited. Each judge’s electronic E-Mail address is listed in Section IV of the “Summary” [Exhibit 1].

PART TWO: FORMATTING REQUIREMENTS

A. General Requirements for Both Paper and Electronically Submitted Orders.

These requirements supercede those contained in Local Rule 9072-1(D), (E), and (F) and will apply to all orders, whether submitted electronically or conventionally in paper [sample order attached - Exhibit 2].

1. The top margin on the first page must be four (4) inches. All other pages of the order will have a top margin of one (1) inch.
2. To assist the court in verifying that the “entire” body of the submitted order has been properly transmitted, the last line in the order must consist of three (3) pound symbols (# # #), centered in the middle of the page, to indicate the order is complete. Any signatures or attachment notations should be placed below the line containing the ### symbols.
3. Do not include a line for the signature of the judge and date signed, as that will be included in the top margin on the first page of the order.

4. All orders shall indicate the name of the attorney submitting the order, the law firm, mailing address and phone number for the firm and, if desired, the fax number and/or email address. This information shall be included on the order, after the line containing the “###” symbols.
5. After the line containing # # #, list all parties who are to receive a conformed copy of the order and if the attorney submitting the proposed order is required to serve the order, include the following statement: “[submitting attorney’s name] is directed to serve copies of this order on the parties listed and file a certificate of service.

B. Technical requirements for uploading proposed orders in E-Orders.

1. Orders can ONLY be uploaded in PDF format and must contain a “.pdf” extension. No security should be applied to the PDF.
2. If you use Adobe Acrobat Writer version 5 or greater, your orders should be prepared using the Arial, Courier, or Times New Roman font (regular, bold, italic, and bold italic). Other fonts will not process correctly through the court’s noticing center. **E-Orders cannot electronically sign orders which have been created using Adobe Distiller 6.0 default settings.**
3. The top margin on the FIRST PAGE must be four (4) inches. All other pages of the order will have a top margin of one inch. Page size (and orientation) should be 8.5 x 11, portrait (note that this is not the same as 11 x 8.5 landscape).

C. Requirements for submission of proposed orders to judge’s dedicated E-mail box.

1. Submit files created in a word processing format.
2. The subject line of the email should include the case number and a description of the order submitted (i.e. “Competing Order from Hearing Held date” or “Findings and Conclusions for Trial on date”).
3. The submitting party must comply with local rule 5005-1(G)1(c) by serving a copy of the proposed order and any cover E-mail text to all adverse parties.

PART THREE: SERVICE OF ORDERS

Administrative Order 05-2 sets forth the provisions addressing electronic docketing of orders, service and certificate of service requirements. In general, the following guidelines apply:

1. All proposed orders must include the name, law firm, mailing address, phone

number and, if desired, the fax number and /or e-mail address of the party who submitted the order, and if the attorney submitting the order is required to serve the order, include the following statement: “[attorney’s name] is directed to serve copies of this order on the parties listed and file a certificate of service.”] See Part Two A of these Guidelines and Exhibit 2.

2. Orders entered on the electronic docket will be served by the clerk via the Bankruptcy Noticing Center (BNC) on the designated serving party unless the order specifically directs the clerk to serve the order. Parties who have appeared electronically in the case at the time the order is entered on the docket will receive their copy of the order via the NEF only. It is the responsibility of the serving party to timely serve the order on all required parties and file a certificate of service with the court reflecting the date and manner of service.
3. Unless requested by the court, no additional copies of orders and service envelopes should be submitted. If a party wishes to receive a conformed copy of a conventional paper order entered in open court, the party must bring an extra copy of the order to the hearing.
4. Conventional paper filers responsible for service will not have access to the Notice of Electronic Filing (NEF) generated by CM/ECF when the order is electronically entered on the docket, thus they will be required to serve all necessary parties by US Mail, absent other agreement among the parties.

PART FOUR: CONTENT REQUIREMENTS

I. General requirements for all proposed orders.

A. Title. Include in the title a description of the order.

(1) For example:

a. "Order Modifying Automatic Stay in Favor of Creditor, Rock Solid Bank"

b. "Order Allowing Claim No. 9"

Note #1: The title "Order" is insufficient. It provides no help when searching the docket for a particular order.

Note #2: Proposed orders submitted pursuant to the court's direction should be in a form that can be signed and entered by the court without modification. Do not include the word "proposed" in the title of the order.

(2) Orders addressing agreed matters should include in the title that the matter is agreed.

(3) See also Local Rule 9072-1, as modified by AO 05-2 and these Guidelines.

- B. Introduction. Always refer to the motion that brought the matter before the court. See Local Rule 9072-1(C). If a hearing was held, always include the date of the hearing. For example:
- a. "On [date], [party] filed an "ex parte" motion for ..."
 - b. "On [date], the court conducted a hearing on [party]'s motion for ..."
 - c. "Without holding a hearing, the court considered the matter on the papers submitted ..."
- C. The decision or determination. Next recite what happened and the reasons why the Court is entering the order.
1. Avoid the use of the word "default". That is a Fed.R.Civ.P. 55 term of art. If the court has directed a response to a motion and the respondent has failed to respond, then the court will grant the motion because the respondent has not opposed the motion. Simply recite all of this as the reason for the order.
 2. If the court's oral ruling at the hearing is to constitute the basis for its decision, simply recite that. For example:
 - a. If Rule 52 findings and conclusions are required: "The court made findings of fact and conclusions of law stated orally and recorded in open court".
 - b. If Rule 52 findings and conclusions are not required: "For the reasons stated orally and recorded in open court that shall constitute the decision of the court, ..."
 3. If the matter is before the court as an agreed matter, the body of the order should state that the matter is an agreed matter.
- D. The disposition. Next state what the court ruled. For example:
- a. "The motion is granted".
 - b. "The objection is sustained".
- E. The relief. Next state the relief that flows from the disposition.
1. For example:
 - a. "Accordingly, the complaint is dismissed without prejudice to the right of the plaintiff to file an amended complaint within ten days of the date of notice of the entry of this order, failing which the complaint will stand and be taken as dismissed with prejudice without further order".
 - b. "Accordingly, Claim No. 9 filed by Rock Solid Bank is disallowed in its entirety".

2. If there are different components to the relief ordered, these should be described in separately numbered paragraphs, for example:
"Accordingly, it is
ORDERED AS FOLLOWS:
 - a. Defendant's Motion to Dismiss Count I of the Complaint is granted.
 - b. Plaintiff shall have ten days to file an amended complaint.
 - c. Defendant's Motion for Sanctions is denied."
- F. The date. Do not include a date provision in the proposed order (e.g., "ORDERED in the Southern District of Florida on ____"). It will be inserted by the court at the top of the first page [see Ex. 2].
- G. Signature section/Widow page. Do not include a signature section in the proposed order. It will be inserted by the court at the top of the first page [see Exhibit 2].

II. Orders granting relief from the stay.

Stay relief orders typically require greater specificity:

- A. The relief. State precisely what relief is provided: state what it is that the creditor can do.
 1. For example:
 - a. "Accordingly, the automatic stay is modified to permit [creditor movant] to commence and prosecute a mortgage foreclosure action in state court against real property, the legal description of which is ..."
 - b. "Accordingly, the automatic stay is modified to permit [movant] to take possession of and sell its collateral more fully described as ..."
 2. Note especially:
 - a. What the creditor can do is specifically stated. Generalities, such as "to enforce its rights", are not sufficient.
 - b. The property must be described specifically.
- B. The in rem limitation. If the scope of relief is limited to in rem only and not in personam against the debtor, so specify. For example:

"The relief granted here permits the creditor to [seek and obtain an in rem judgment] [take action] against the property only and does not permit the creditor to seek or obtain in personam relief against the debtor".

III. Judgments and orders, especially (but not limited to) those in adversary proceedings.

- A. The federal rules make a significant distinction between a decision and a judgment. The rules further provide that the judgment be set forth in a separate document, not added to the end of a decision. Bankruptcy Rule 9021; Fed.R.Civ.P. 58. This is called the separate judgment rule.
- B. Examples of decisions include:
 - 1. Findings of fact and conclusions of law entered under Fed.R.Civ.P. 52.
 - 2. An order granting a motion for summary judgment under Fed.R.Civ.P. 56.
 - 3. An order granting a motion for judgment by default under Fed.R.Civ.P. 55.
- C. A decision must include the reasons of fact and law that cause the court to grant the relief requested. In a money judgment situation, the decision should contain the amount to which the plaintiff is entitled and how it is calculated. On appeal, the reviewing authority will look to the decision to see why the trial court entered the judgment. If there are no reasons, or if the reasons are insufficiently stated, the judgment may be reversed summarily.
- D. The decision should contain words like:
 - 1. "In accordance with Bankruptcy Rule 9021, the court is contemporaneously entering a separate judgment".
 - 2. "Counsel for the plaintiff is directed to submit a separate judgment for consideration and entry by the court".
- E. The judgment should then generally be in the form contained in Fed.R.Civ.P. Form 32 appropriately modified. However, it should be prepared for entry by the court and not for entry by the clerk.
- F. The federal rules also include a single judgment rule. If the complaint seeks relief against multiple parties or involves multiple claims, one judgment only is entered after all of the claims against all of the parties have been determined. Bankruptcy Rule 7054(a); Fed.R.Civ.P. 54(b). In this event, there may be several decisions entered by the court throughout the course of the proceeding upon which the single judgment, entered at the end, is based. In extraordinary circumstances, but only with express determinations and directions, the court may direct entry of judgment when fewer than all claims are determined. Id.
- G. Post-judgment interest is controlled by 28 U.S.C. § 1961, not the Florida statutes. If you are entitled to post-judgment interest, recite in the

judgment that the plaintiff is "owed \$_____ in principal plus interest at the rate of (determine federal interest rate and fill it in here)% from (date certain) to (date of judgment)". Leave a blank line in the judgment for entry of the amount. Determine the applicable federal interest rate and provide a memorandum indicating the amount owed if the judgment is entered on a particular date.

H. The memorandum shall conform to the following example:

- a. Memorandum on interest
3 May 2004 - \$1,070.00
4 May 2004 - \$1,098.15
5 May 2004 - \$1,136.21

- I. The court may grant costs to the prevailing party pursuant to Bankruptcy Rule 7054(b) and Local Rule 7054-1. The amount of costs is not included in the text of the judgment. After the entry of judgment, the party entitled to costs may file a Local Form "Bill of Costs" (LF-41). 28 U.S.C. § 1920; Bankruptcy Rule 7054(b); Bankruptcy Rule 9021; Fed.R.Civ.P. 58. If you object to the clerk's action in taxing costs, file a motion to review the clerk's taxation of costs. Bankruptcy Rule 7054(b); Local Rule 7054-1(E).
- J. Motions for judgment by default after a default has been entered pursuant to Fed.R.Civ.P. 55 shall be submitted in accordance with Local Rule 7055-1. Remember especially that attorneys fees must be specifically alleged, Bankruptcy Rule 7008(b); and that the relief contained in the judgment cannot exceed the amount requested in the complaint, Fed.R.Civ.P. 54(c).

Exhibit 1

SUMMARY LIST OF ORDERS AND METHODS OF SUBMISSION

- I. THE FOLLOWING LOCAL FORM ORDERS WILL NOW BE PREPARED BY THE COURT AND SHOULD NO LONGER BE SUBMITTED WITH ELECTRONICALLY OR CONVENTIONALLY FILED MOTIONS:**
- A. Order Upon Conversion of Case Under Chapter 13 to Case Under Chapter 7 by the Debtor
 - B. Pretrial Order in an Adversary Proceeding and Sworn Declaration of Fact in an Adversary Proceeding
 - C. Order Dismissing Chapter 7 Case for Failure to Appear at the § 341 Meeting of Creditors
 - D. Order Conditionally Approving Disclosure Statement and Setting Hearing on Final Approval of Disclosure Statement and Confirmation of Chapter 11 Plan
 - E. Order (I) Setting Hearing to Consider Approval of Disclosure Statement; (II) Setting Deadline for Filing Objections to Disclosure Statement; and (III) Directing Plan Proponent to Serve Notice
 - F. Order (I) Approving Disclosure Statement; (II) Setting Hearing on Confirmation of Plan; (III) Setting Hearing on Fee Applications; (IV) Setting Various Deadlines; and (V) Describing Plan Proponent's Obligations
 - G. Order Confirming Chapter 13 Plan
- II. PAPER: Both Conventional Filers and Registered Users must Submit the Following Orders in Paper:**
- A. Submit the following at time of filing the related application or motion:**
- 1. Application by Individual Debtor to Pay Filing and Administrative Fees in Installments and Order
 - 2. Order for Payment of Unclaimed Funds
 - 3. Order Admitting Attorney Pro Hac Vice

B. Submit at hearing: Proposed orders in contested matters set for hearing (see Local Rule 5005-1(G)(b)). Parties desiring a conformed copy of an order entered in open court should bring a copy of the order to the hearing.

III. E-ORDERS: THE FOLLOWING MUST BE SUBMITTED BY REGISTERED USERS TO THE E-ORDERS PROGRAM, NOT DOCKETED DIRECTLY TO CM/ECF. (NOTE: IF ANY OF THESE ORDERS ARE SERVED ON NEGATIVE NOTICE, THE PROPOSED ORDER MUST ALSO BE FILED AS AN ATTACHMENT TO THE MOTION WHEN FILED.)

A. Local Form Orders (where motion is uncontested):

- Order Converting Case Under Chapter 7 to Case Under Chapter 11
- Order Converting Case Under Chapter 7 to Case Under Chapter 12
- Order Converting Case Under Chapter 7 to Case Under Chapter 13
- Order Converting Case Under Chapter 11 to Case Under Chapter 7
- Order Upon Conversion of Case Under Chapter 12 to Case Under Chapter 7 by the Debtor
- Order Converting Case Under Chapter 13 to Case Under Chapter 7
- Order Approving Employment of Debtor in Possession's Attorney
- Order Approving Employment of Trustee's Attorney
- Order Approving Employment of Auctioneer
- Order Sustaining Objection to Claims
- Order Reopening Case to Add Omitted Creditor(s)
- Order Reopening Case to Administer Additional Assets
- Order of Referral to Mediation
- Order Jointly Administering Chapter 7 Cases
- Order Jointly Administering Chapter 11 Cases
- Order Vacating Dismissal and Reinstating Chapter 13 Case (only chapter 13 trustee submits)
- Order Confirming Uncontested Chapter 13 Plan (only chapter 13 trustee submits)
- Order Confirming Uncontested Amended Chapter 13 Plan and Notice of Opportunity to Object to Amended Plan (only chapter 13 trustee submits)
- Agreed Order to Employer to Deduct and Remit and for Related Matters (Ch. 13 Wage Deduction Order)
- Order Establishing Procedures to Permit Monthly Payment of Interim Fee Applications of Chapter 11 Professionals

B. Other orders to be uploaded in E-Orders:

1. Orders on motions which were served on negative notice where a certificate of no response or settlement will be filed.
2. Ex parte orders submitted for requests for relief which may be considered immediately by the court without opportunity for objection or hearing.
3. Proposed orders on motions for continuances. The proposed order should contain blank spaces for the date and time of the rescheduled hearing in the event that the court grants the motion for continuance without hearing.
4. Proposed orders extending deadlines for filing documents. The proposed order should include the new requested deadline that complies with any applicable rules.
5. Agreed orders.

IV. JUDGES' E-MAIL BOXES:

These e-mail boxes are solely for the purpose of submitting proposed orders as directed by the judge:

**Chief Judge Robert A. Mark
Judge A. Jay Cristol
Judge Paul G. Hyman
Judge Raymond B. Ray
Judge Steven H. Friedman**

**RAM_Chambers@flsb.uscourts.gov
AJC_Chambers@flsb.uscourts.gov
PGH_Chambers@flsb.uscourts.gov
RBR_Chambers@flsb.uscourts.gov
SHF_Chambers@flsb.uscourts.gov**

Exhibit 2



ORDERED in the Southern District of Florida on October 14, 2005

Paul G Hyman
United States Bankruptcy Judge

**United States Bankruptcy Court
Southern District of Florida
www.flsb.uscourts.gov
Division: Fort Lauderdale**

In re:

Case No:
Chapter 13

Debtor _____/

ORDER CONFIRMING CHAPTER 13 PLAN

THIS CAUSE came before the court on _____, for confirmation of the debtor's proposed chapter 13 plan. The court having heard argument of the chapter 13 trustee ("Trustee") and of counsel for the respective parties, and for cases filed on or after October 17, 2005, having received the debtor's "Certificate of Compliance and Request for Confirmation of Chapter 13 Plan", it is:

ORDERED as follows:

1. The debtor's chapter 13 plan (the "Plan") meets with the provisions of 11 U.S.C. § 1325, and if applicable, §§ 521 and 1308, is, therefore, confirmed in accordance with its terms.

2. Any claim entitled to priority under 11 U.S.C. § 507 shall be paid in full, in periodic installments, in the order of priority prescribed by the Bankruptcy Code over the period of the Plan as required by 11 U.S.C. § 1322(a)(2), with postpetition interest as required by 11 U.S.C. § 506(b) payable on the secured portion of the claim.

3. The debtor's first monthly payment to the Trustee under the Plan was required to commence on _____. The Trustee shall begin disbursement to creditors pursuant to the Plan as soon as practicable upon entry of this order.

4. If the Plan does not provide for payments to a secured creditor, such creditor is granted in rem stay relief to pursue available state court remedies against any property of the debtor which secures the creditor's claim.

5. Any executory contract or unexpired lease of the debtor which has not been assumed pursuant to court order prior to entry of this order, or which is not assumed in the Plan confirmed by this order, is deemed rejected upon entry of this order.

6. If the confirmed plan in this case provides for payment to holder(s) of tax certificates on property of the debtor(s), the following provisions shall apply:

A. To ensure that the records of the County Tax Collector credit amounts received by certificate holders, upon receipt of information pursuant to subparagraph B below, the Tax Collector is ordered to adjust the County tax records and reduce both the amount owed on tax certificates and the amount of the tax lien to reflect payments made by the Chapter 13 Trustee to certificate holders under the confirmed plan.

B. The Tax Collector shall be served with any order entered post-

confirmation which (a) dismisses or converts this case; (b) grants stay relief to the holder of a secured claim on the property subject of the tax certificates; (c) approves a sale or refinancing of the property subject of the tax certificates; (d) modifies the plan to eliminate further payments to one or more certificate holders; or (e) discharges the debtor(s) upon completion of the plan. Upon receipt of any such order, the Tax Collector shall request a ledger from the Chapter 13 Trustee reflecting the amounts paid to certificate holders under the confirmed plan, or obtain the ledger information by accessing the Chapter 13 Trustee's website.

- C. During the period in which the certificate holders are receiving payments under the confirmed plan, unless otherwise ordered, the Tax Collector is enjoined from accepting a redemption payment for any certificate which is included in the plan. This injunction will dissolve without further order of the Court if (a) one of the orders described in subparagraph B is entered; and (b) the County has complied with the requirements in subparagraph A by reducing both the amount owed on any certificate paid or partially paid under the plan and the amount of the tax lien by the amount paid to the certificate holder as reflected in the Chapter 13 Trustee's ledger."

7. If the debtor fails to timely make any Plan payment to the Trustee, the Trustee may serve a "Notice of Delinquency" upon the debtor and the debtor's attorney. The debtor shall have 45 days from the date of the "Notice of Delinquency" to make all

payments due under the Plan, including any payments that become due within the 45-day period. Debtor seeking to cure the delinquency in a modified plan must file a motion to modify the confirmed plan within 15 days of the date of the "Notice of Delinquency". If the debtor is not current in their plan payments on the 45th day after the date of the "Notice of Delinquency", the Trustee shall file and serve a report of non-compliance and the case will be dismissed without further notice or hearing. Dismissal shall be with prejudice to the debtor filing any new bankruptcy case for a period of 180 days from entry of the order of dismissal. The court will not extend these deadlines absent extraordinary circumstances.

8. To the extent the Plan sought a determination of valuation pursuant to Bankruptcy Rule 3012, and no objections were filed or any objections were resolved, the terms of the Plan will be binding upon the affected secured creditors, and any allowed proof of claim will be secured only to the extent of the value as provided for in the Plan and unsecured as to the balance of the claim.

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Submitted By:

Copies Furnished To:

All parties of record by the clerk